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# In the Supreme Court of the United States

**OCTOBER TERM, 1954.**

**No. 173.**

AMALGAMATED CLOTHING WORKERS OF AMERICA AND CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA,

*Petitioners,*

vs.

THE RICHMAN BROTHERS COMPANY,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

## BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

LUTHER DAY,
1759 Union Commerce Bldg.,
Cleveland, Ohio,
*Attorney for Respondent.*

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## BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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### QUESTIONS PRESENTED.

**I.**

Was the Federal District Court prohibited by statute, 28 USC Section 2283, from granting a preliminary injunction against prosecution by respondent of its action in a state court to enjoin petitioners and others from picketing and recurrently obstructing the entrances of stores of respondent?

**II.**

Did the Federal District Court abuse its discretion in denying a preliminary injunction in such case where the sole ground for the injunction presented the same issue as that previously determined in respondent's favor in the state court action by the overruling of a demurrer to the petition in the state court action, the sole ground of the demurrer being that the state court was without jurisdiction?

**STATEMENT.**

The statement on pages 3-6 of the petition for the writ is deemed sufficient except as herein corrected and enlarged.

The gist of respondent's petition in the state court action is not merely the conspiracy, as stated on page 4 of the petition for the writ, but is that the defendants in the state court action, in carrying forward the conspiracy, were causing respondent to be irreparably damaged by the picketing of, and the recurrent obstructing of entrances to, stores of respondent (R. 8a-11a). In the petition in the state court action it is further alleged in substance that the picketing was done with knowledge on the part of the defendants therein that it is a commonly accepted belief acted upon by a substantial part of the general public that no person may cross a picket line without permission of the picketing union (R. 10a).

The statement in the petition for the writ (p. 3) to the effect that the instant case arose out of Amalgamated's attempt to organize respondent's manufacturing employees and that the picketing was a part of such organizational campaign is not supported by the record herein. More-

over, it is not in accord with petitioners' answer (R. 17a-21a) in the state court action wherein, after alleging in effect that no members of the petitioners' union are employed in any plant or store of respondent and that respondent is in direct competition with manufacturers who employ members of the petitioners' union, it is further alleged that the picketing has been carried on "for the sole purpose of disseminating the information to the members of organized labor and to the public who are in sympathy with organized labor that the plaintiff does not employ union labor, and that the plaintiff and its employees are in competition with members of this union." (R. 19a.) In the petition for the writ (footnote 3, p. 7) it is stated that "Amalgamated's picketing was part of a campaign of peaceful persuasion—apprising the public of Richman's non-union status and urging the public to refrain from purchasing Richman's products."

Although the decision of the Court of Appeals, as well as that of the District Court, is grounded solely on Section 2283, the Court of Appeals, in its opinion (R. 154a-155a), expressly recognizes that there is collaterally involved a question, which the court did not decide, as to whether the subject matter of respondent's petition in the state court action is within the exclusive jurisdiction of the National Labor Relations Board, notwithstanding this Court's decision in *Garner v. Teamsters Union*, 346 U. S. 485. This collateral question is presented in the petition for the writ (pp. 6-9) as the first reason for the granting of the writ. Only the denial of a preliminary injunction being involved herein, the record is without evidence upon which the collateral question may properly be resolved.

## ARGUMENT AGAINST GRANTING THE WRIT.

### I.

### The Preliminary Injunction Was Properly Denied Because of the Prohibition in 28 USC Section 2283.

The following is a copy of the statute referred to:

> "A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

In the petition for the writ there are only two arguments with respect to the statute. The first is that the statute is inapplicable to a case involving state court invasion of exclusive federal jurisdiction. The second, alternative to the first, is to the effect that the second exception in the statute permits the issuance of the requested injunction (Pet. for writ, pp. 10-16).

Since petitioners make no claim that either of them apply herein, the first and third exceptions to the operation of the prohibition of the statute need only brief attention. The first exception, by its terms, applies only when the granting of the injunction is "expressly authorized by Act of Congress." The absence herein of any such act prevents reliance on that exception. The third exception, by its terms, applies only "where necessary * * * to protect or effectuate its judgments." Aside from denying a stay and a preliminary injunction herein, the only judgment rendered in this controversy by the District Court is its order remanding the removed action to the state court "for further proceedings" (R. 147a) therein. Manifestly, the requested preliminary injunction could not be necessary to protect or effectuate the judgment of remand,—on the contrary, it would result in a defeat thereof.

The second exception, by its terms, removes the prohibition of the statute against a court of the United States granting an injunction to stay proceedings in a state court only "where necessary in aid of its jurisdiction." Manifestly, because of its wording, this exception can have application only where the injunction is necessary in aid of the jurisdiction of the court granting it and can have no application to the granting of an injunction necessary in aid of the jurisdiction of an administrative agency such, for example, as the National Labor Relations Board. It is this express limitation as to the application of the second exception which defeats petitioners' second argument directed to the statute.

The sole relief sought by petitioners in the District Court is injunctive relief. Petitioners have not sought such relief on the ground that it is necessary in aid of any jurisdiction of the District Court. In fact, they state in their petition for the writ (p. 5) that they asked the District Court to enjoin respondent from proceeding with its state court action "on the ground that Richman's petition complained of matters within the exclusive jurisdiction of the National Labor Relations Board and that the state court was therefore without jurisdiction." It follows that if the injunctive relief sought herein were necessary in aid of any jurisdiction it would have to be the jurisdiction of the Board, not that of the District Court.

This is neither an action to review an order of the National Labor Relations Board, nor is it an action brought on application of the Board or any agent thereof. It is an action by petitioners as private parties on their own behalf, solely for injunctive relief with respect to a labor matter, and on the sole ground that the matter is within the exclusive jurisdiction of the Board. There is no provi-

sion in the National Labor Relations Act, as amended (29 USC (Supp.) Sections 151, et seq.), for the bringing of any such action by private parties. The act contains express provisions determinative of the occasions and instances when, and the conditions under which, a federal court may act with respect to a labor matter which is within the exclusive jurisdiction of the Board, none of which have or are claimed to have any application herein.

If, therefore, as contended for by petitioners, the subject matter of the action in the state court is within the exclusive jurisdiction of the Board, then, upon the same reasoning which allegedly deprives the state court of jurisdiction and vests it exclusively in the Board, the District Court is without any power or jurisdiction, upon application by petitioners, to stay by injunction the state court action. It is from the provisions of the National Labor Relations Act, as amended, alone, that the Board derives all of its exclusive jurisdiction with respect to labor matters covered by the act. It is because of the same provisions that this Court has several times pointed out that not only state courts but also federal courts are deprived of jurisdiction with respect to matters within the exclusive jurisdiction of the Board, subject to the right and duty on the part of specified federal courts to act in such matters by way of review and enforcement of orders by the Board and by way of granting relief on applications by the Board or its agent, as provided for in the act (29 USC (Supp.) Sections 160 (e), (f), (j), and (l)).

In *Garner v. Teamsters Union*, 346 U. S. 485, this Court, in referring to the fact that the act provides a complete means for the handling of labor matters covered thereby, said (p. 489): "The power and duty of primary decision lies with the Board, not with us," then concluded

as follows (p. 491): "The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or on application of the federal Board precludes state courts from doing so," and cited *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41 and *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261.

The question in the *Myers* case was whether a federal district court had equity jurisdiction, upon application by an employer, to enjoin the National Labor Relations Board from hearing a complaint against the employer on the ground, *inter alia*, that the National Labor Relations Act was inapplicable to its business and the Board was without jurisdiction. This Court held that initial jurisdiction of labor matters covered by the act is vested by the act exclusively in the Board; that the District Court had, therefore, no jurisdiction or power to grant the injunction; and that the employer had an adequate remedy by virtue of provisions for appeal as to any order made by the Board. Upon the same reasoning if, as petitioners herein claim, the subject matter of respondent's petition in the state court is within the exclusive jurisdiction of the Board, then, by reason of the provisions of the National Labor Relations Act, as amended, the District Court has no power or jurisdiction in this case and petitioners should be left to their remedy of appeal from any order that may be made in the state court action of respondent. It was through such a course of appeal that the *Garner* case came to this Court.

Sufficiently comparable factually with the instant case to merit their attention herein are: *International Union, etc. v. William D. Baker Co.*, 100 F. Supp. 773 (D. C. E. D. Pa., 1951); *United Electrical R. & M. W. v. Westinghouse*

*Electric Corp.*, 65 F. Supp. 420 (D. C. E. D. Pa., 1946); and *Davega-City Radio, Inc. v. Boland*, 23 F. Supp. 969 (D. C. S. D. N. Y., 1938). In each of those cases (1) private parties were seeking injunctive relief, (2) claiming that the state court had no jurisdiction to proceed because federal legislation had removed it—in the latter two cases the legislation was the National Labor Relations Act, and (3) the jurisdiction of the federal district court was invoked solely for the purpose of preventing further proceedings in the state court and not in aid of jurisdiction of the federal court otherwise invoked. In the case first above cited it was held that Section 2283, and in the other two it was held that Section 265 of the Judicial Code, 28 USC 379 (of which Section 2283 is a 1948 revision) prohibited a federal district court from issuing an injunction to stay proceedings in a state court.

For support to their argument that the instant case is within the second exception to Section 2283 (Pet. for writ, pp. 13-16), petitioners rely upon *NLRB v. New York State Labor Relations Board*, 106 F. Supp. 749 (S. D. N. Y., 1952) and *Capital Service, Inc. v. NLRB*, 347 U. S. 501. In that argument petitioners also cite *United Construction Workers v. Laburnum*, 22 U. S. L. Week 4289 (June 7, 1954), and comment upon the *Garner* case, but in neither of the latter two cases was Section 2283 involved. Each of the first two cases referred to is distinguishable from the instant case and for the same reason. In each thereof the National Labor Relations Board sought injunctive relief in a federal court in pursuance of provisions of the National Labor Relations Act. In the instant case, however, petitioners, as private parties, seek injunctive relief in the District Court upon the sole claim that the Board has exclusive jurisdiction of the state court action of respondent.

But the National Labor Relations Act, as amended, contains no provision authorizing any such action by private *parties, as distinguished from the Board.*

Petitioners' only other argument relating to Section 2283 is that the prohibition of the statute is inapplicable to cases involving state court invasion of exclusive federal jurisdiction (Pet. for writ, pp. 10-13). In support of this argument petitioners rely upon statements in the opinions in *Toucey v. New York Life Ins. Co.*, 314 U. S. 118 and in *Bowles v. Willingham*, 321 U. S. 503, to the effect that Section 265 of the Judicial Code (28 USC Section 379) does not apply to a situation involving exclusive federal jurisdiction. The decisional law and the differences in the wording of Sections 265 and 2283, however, disclose that such reliance by petitioners has been misplaced.

In this connection it is to be observed, as stated in the petition for the writ (p. 11), that Section 2283 is a 1948 revision of Section 265 and that the latter prohibited all injunctions against state court proceedings, with the single exception of "cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." As will be seen, exceptions to Section 265, implied by construction and by subsequent legislation, including that involved in the *Bowles* case, were recognized. Section 2283, however, came into effect on June 25, 1948, which was subsequent to the enactment of the Labor Management Relations Act amending the National Labor Relations Act and subsequent to the decisions in the *Toucey* and *Bowles* cases, and by its terms evidences legislative intent to permit only express exceptions thereto.

As stated in the *Bowles* case (p. 510), this Court in the *Toucey* case considered the history of Section 265 and the exceptions which have been engrafted on it and therein

listed the few Acts of Congress passed since its first enactment in 1793 which have operated as implied legislative amendments to it. From such review in the *Toucey* case, aided by the decision in the companion case of *Southern Railway Co. v. Painter*, 314 U. S. 155, it is to be seen that this Court has recognized only one non-statutory implied exception to the operation of Section 265 in litigation involving private parties, i.e., that pointed out in the *Toucey* case (pp. 134-135) in cases where a federal court has power to protect its jurisdiction of a res acquired prior to the attempted assertion by a state court of jurisdiction over the same res. From such review it further appears that this Court did not recognize that there ever existed any non-statutory implied exception to Section 265 in a case where it is claimed that the state court has no jurisdiction of an action over which it has asserted jurisdiction.

The *Bowles* case is distinguishable from the case at bar in that essentially the holding therein is that Section 205(a) of the Emergency Price Control Act of 1942 created an implied exception to Section 265. See *Fleming v. Rhodes*, 331 U. S. 100, 108. Moreover, in the *Bowles* case, the action to enjoin state court proceedings was by the Price Administrator, an agent of the United States, acting in pursuance of provisions of the Emergency Price Control Act of 1942 (50 USC (Supp.) Sec. 925 (2)), which was enacted subsequently to Section 265. On the other hand, the instant action is one by petitioners, as private parties, to enjoin respondent from proceeding in a state court action on the sole alleged ground that the subject matter of the state court action is within the exclusive jurisdiction of the National Labor Relations Board, and there is no provision in the National Labor Relations Act, as amended, authorizing petitioners so to proceed.

Section 2283 having been enacted subsequently to amendment of the National Labor Relations Act by the Labor Management Relations Act, manifestly there can be no proper basis for any claim to the effect that the National Labor Relations Act, as amended, carries with it an implication that such act constitutes a legislative amendment of Section 2283. It is significant that by the terms of the first express exception provided in Section 2283 the prohibition of the Section does not apply to stay state court proceedings where "expressly authorized by Act of Congress," because it would appear therefrom that subsequent legislation may no longer be deemed to impliedly remove the prohibition against a stay of state court proceedings, as was held, among others, in the *Bowles* case.

Whether the subject matter of respondent's petition in the state court is within the exclusive jurisdiction of the National Labor Relations Board, as contended for by petitioners (Pet. for writ, pp. 6-9), raises a collateral question not essential to any question before this Court. As pointed out in the opinion of the appellate court (R. 154a-155a), such collateral question is not within the scope of the decision in the *Garner* case, because foreign to that decision are the allegations in respondent's petition in its state court action to the effect that the picketing therein complained of is recurrently obstructing the entrances to stores of respondent. Furthermore, the purpose of such picketing, as alleged in the answer of petitioners in the state court action and previously herein stated (*supra*, p. 3), presents an issue in respondent's state court proceedings which was not present in the *Garner* case.

## II.

### The Denial By the District Court of the Preliminary Injunction Does Not Constitute an Abuse of Discretion.

The petition for the writ (pp. 4-5) discloses that petitioners moved the state court to dismiss respondent's action on the ground that the action was exclusively within the purview of the National Labor Relations Board and that the state court was therefore without jurisdiction. It further discloses that, after that motion (treated as a demurrer under Ohio procedure) was denied, petitioners instituted this action to enjoin respondent from further prosecution of its state court action on the same ground, i.e., that respondent's petition complained of matters within the exclusive jurisdiction of the Board and that the state court was therefore without jurisdiction.

Upon the conceded facts above stated, the denial of a preliminary injunction herein did not constitute an abuse of discretion. Under the circumstances, the case at bar constitutes an attempt to obtain, by an independent action, appellate review of a decision by the state court. This, the courts do not permit. *American Surety Co. v. Baldwin*, 287 U. S. 156, 164-167.

A closely comparable factual situation was present in *Davega-City Radio, Inc. v. Boland*, 23 F. Supp. 969 (D. C. S. D. N. Y., 1938), in which an employer was attacking the jurisdiction of a state board and certain courts. After the federal district court said it was powerless to grant the requested injunction because of Section 2283, it further said (p. 970):

> "There is also a further reason why the suit must be dismissed, namely, the principle that a decision of a state court may not be reviewed by bill in equity in a federal court. American Surety Co. v. Baldwin, 287 U. S. 156, 164. * * *; Lynch v. International Banking

> Corp., 9 Cir., 31 F. 2d 942, certiorari denied, 280 U. S. 571, * * *; Furnald v. Glenn, 2 Cir., 64 F. 49, 54; Ritholz v. North Carolina State Board, D. C. M. D. N. C., 18 F. Supp. 409, 413. Here the plaintiff has presented to the state court the same questions as to the jurisdiction of the state Board that it wishes this court to decide. The issue having been decided adversely to it, its remedy is appeal through the appropriate state courts and, if necessary, review by the Supreme Court of the United States. *It cannot obtain a review by this independent suit in the federal court.*"

See also, *United Electrical R. & M. W. v. Westinghouse Electric Corp.*, 65 F. Supp. 420 (D. C. E. D. Pa., 1946), and *International Union, etc. v. William D. Baker Co.*, 100 F. Supp. 773 (D. C. E. D. Pa., 1951).

The principle was applied to prevent indirect appellate review, by this means, of an interlocutory decree in *Furnald v. Glenn*, 64 Fed. 49 (C. C. A. 2nd, 1894). See the general discussion in *General Exporting Co. v. Star Transfer Line*, 136 F. (2d) 329 (C. C. A. 6, 1943).

**CONCLUSION.**

For the foregoing reasons the petition for a writ of certiorari in this case should be denied.

Respectfully submitted,

LUTHER DAY,
1759 Union Commerce Building,
Cleveland 14, Ohio,
*Attorney for Respondent.*